

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re M. C., a Person Coming Under the Juvenile
Court Law.

C087370

SAN JOAQUIN COUNTY HUMAN SERVICES
AGENCY,

(Super. Ct. No.
STKJVDP20170000415)

Plaintiff and Respondent,

v.

M. C.,

Defendant and Appellant.

Mother of the minor M. C. appeals from the juvenile court's order bypassing reunification services under Welfare and Institutions Code¹ section 361.5, subdivision (b)(6). The San Joaquin County Human Services Agency (Agency) concedes

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

the issue. We will accept the Agency's concession as prudent and reverse and remand for further proceedings in the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

The minor, born in June 2006, is mother's only child and has no siblings or half siblings. Mother and the minor were residing with the maternal grandmother until December 2016, when mother moved to Oakland with her boyfriend, leaving the minor in the maternal grandmother's care. Thereafter, mother was "in and out" of the maternal grandmother's home. The maternal uncle also lived with the maternal grandmother, as did the minor's cousins, D. C. and A. C.,² who had been living there for the past five years.

On August 29, 2017, paramedics were called to the maternal grandmother's home, where the minor's cousin, A. C., was found deceased with new and old injuries all over her body consistent with having been beaten with various objects. The maternal uncle, Arthur C., eventually confessed to physically disciplining A. C. because she had "behavioral problems." He admitted that twice weekly he would strike A. C.'s body with a belt, an extension cord, and a metal spatula approximately 20 times, and would gag her mouth with a sock to prevent her from screaming. He denied tying anything around A. C.'s neck. He told detectives A. C. had never been enrolled in school or seen by a doctor in the five years she lived with the maternal grandmother because he and the maternal grandmother were afraid someone would notice A. C.'s injuries. Arthur C. stated neither the minor nor her other cousin, D. C., had behavior problems and claimed he only hit the minor once on her hands.

A. C.'s stepgrandfather told detectives he was aware Arthur C. was disciplining A. C. and had seen Arthur C. hit A. C. with an extension cord, but did not intervene

² D.C. and A. C. are not parties to this appeal.

“because he was not a blood relative.” The maternal grandmother admitted she had seen Arthur C. hit A. C. before with an object and told him not to do so again. She also admitted she spoke with Arthur C. about not enrolling A. C. in school for fear someone would see A. C.’s injuries. Detectives suspected the maternal grandmother knew Arthur C. was abusing and torturing A. C. but failed to protect her.

Detectives spoke with the minor, who denied ever being hurt or mistreated at home. She also denied ever seeing anyone hurt A. C. Her cousin, D. C., also denied being hurt or mistreated at home. He stated that he rarely got in trouble and when he did, he was either forced to stand in a corner or he received a “whooping” from his uncles. D. C. denied seeing A. C. being abused, but stated he could hear her in the bedroom “screaming.” He told detectives that both his maternal uncle “AJ” and his maternal grandmother “whoop[ed]” A. C. with objects like a spatula and a cord, and usually hit A. C. on the hand to make her stop stealing. D. C. stated the maternal grandmother also tied A. C.’s hands behind her back with a sock and made her stand in a corner for long periods of time. He noted that “ ‘everybody’ ” at home had seen A. C. walking around the house with her hands tied behind her back with a sock.

The Agency removed the minor and D. C. from the maternal grandmother’s home. When a social worker contacted mother by phone to inform her of the situation and explain that A. C. was deceased, mother stated she had no knowledge her niece died and began sobbing over the phone. Mother stated she lived with her boyfriend in Oakland but was “in and out of the [maternal grandmother’s] home.” She claimed she was “somewhat” aware that Arthur C. was using excessive discipline on A. C., but did not report that information to the authorities and continued to allow the minor to live in the maternal grandmother’s home.

On August 31, 2017, the Agency filed a dependency petition pursuant to section 300, subdivisions (b) and (g). The petition alleged mother failed to protect the minor due to the severe physical abuse, torture, and death of A. C. by Arthur C., who

resided in the maternal grandmother's home along with the minor. The petition further alleged failure to provide support due to the fact that the whereabouts of the minor's alleged father was unknown.

The court ordered the minor and her cousin, D. C., detained on September 1, 2017, and sustained the allegations in the dependency petition on October 25, 2017. Mother was granted weekly supervised visits.

At the contested disposition hearing on April 4, 2018, the Agency recommended reunification services to mother and argued section 361.5, subdivision (b)(6) did not apply to bypass services to mother as the minor had not suffered harm and, although A. C. had suffered harm, the minor and A. C. were not siblings or half siblings. The court disagreed, stating the statute applied to "any child that's in the home." The social worker testified to the close relationship between mother and the minor and the fact that the minor wanted to live with mother.

Mother testified to her bond with the minor. She stated that, but for the two months prior to A. C.'s death, she visited the minor at the maternal grandmother's home every two to three weeks and never saw any discipline that caused her concern. She further testified she saw Arthur C. do exercises with A. C., something mother did not find unusual, and stated that A. C. would occasionally be on "timeout" in the bedroom all weekend as punishment for stealing but would come out to go to the bathroom and eat. The minor never told her that she or anyone else in the home was being hit or being denied food. Mother never saw marks, scars, or bruises on A. C.'s face or body.

Mother's boyfriend, Frank J., testified he had been in a relationship with mother for three and one-half years, and had lived with her the past year and one-half in Oakland. He and mother went to the maternal grandmother's house every other weekend and spent the night. Frank J. saw mother discipline the minor by putting her in "[t]imeout" in the corner. He never saw any discipline of A. C. that caused him concern and never saw any marks on her. None of the children ever told him they were concerned for their safety.

The court ordered bypass of reunification services to mother pursuant to section 361.5, subdivision (b)(6), finding the minor would not benefit from reunification services based on the fact that mother “neglected to remove her child from the care of the maternal uncle . . . although she knew or reasonably should have known [the maternal uncle] was physically abusing the minor’s cousin, [A. C.], and said abuse resulted in the death of [A. C.].”³ No section 366.26 hearing was set.

DISCUSSION

Mother contends there was insufficient evidence to warrant bypass of reunification services under section 361.5, subdivision (b)(6). The Agency concedes the issue. We agree.

“Family reunification services play a critical role in dependency proceedings. [Citation.] Unless a specific statutory exception applies, the juvenile court must provide services designed to reunify the family within the statutory time period. [Citations.] The statutory exceptions to providing reunification services under section 361.5 have been referred to as reunification ‘bypass’ provisions. (§ 361.5, subd. (b)(1)-(15); [citations].) There is no general bypass provision; the court must find by clear and convincing evidence that one or more of the subparts enumerated in section 361.5, subdivision (b) apply before it may deny reunification services to a parent. (§ 361.5, subd. (b)(1)-(15); see also 42 U.S.C. § 671(a)(15)(D).)” (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 845-846 (*Tyrone W.*)). We review an order denying reunification services under section 361.5, subdivision (b) for substantial evidence. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.)

³ Despite the court’s verbal and written order bypassing reunification services to mother, the minute order also includes language stating reunification services are to be provided by the Agency to mother. We assume this was a clerical error.

Here, the juvenile court applied section 361.5, subdivision (b)(6)(A) to bypass reunification services to mother. Under that section, reunification services need not be provided to a parent when the court finds, by clear and convincing evidence: “That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of . . . the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.” Section 361.5, subdivision (b)(6)(C) provides: “A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child’s body or the body of a sibling or half sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.”

“The Legislature did not intend subdivision (b)(6) to apply to deny reunification services to a negligent parent; rather, the parent must have been complicit in the deliberate abuse of the child. Identification of the parent who inflicted severe physical harm on a child is required when the evidence does not show both parents knew the child was severely injured or knew the child was being abused.” (*Tyrone W., supra*, 151 Cal.App.4th at p. 843.)

Mother contends the evidence established the minor was adjudicated a dependent pursuant to section 300 as a result of her uncle’s infliction of severe physical harm on her cousin, A. C., not because the minor herself suffered physical abuse or physical abuse was inflicted on her sibling or half sibling. Mother further contends the minor would have benefited from services. Mother’s claims have merit.

The minor was adjudicated a dependent pursuant to section 300 as a result of mother's failure to protect the minor related to the abuse, torture, and death of the minor's *cousin* by Arthur C., not as a result of the infliction of severe physical harm to *the minor or the minor's sibling or half sibling*, as required by section 361.5, subdivision (b)(6). There was no evidence the minor suffered physical, verbal, emotional, or other abuse by mother or anyone else, and the court made no such finding. Even assuming mother was aware of Arthur C.'s physical abuse of A. C., mother is not the parent or guardian, nor is A. C. the child, contemplated by section 361.5, subdivision (b)(6), which requires a finding of deliberate and serious injury *inflicted on the minor* "by an act or omission *of the parent or guardian, or of another individual or animal with the consent of the parent or guardian.*" (§ 361.5, subd. (b)(6)(C), italics added.) The court made no such finding here. Instead, the court found mother "neglected to remove [the minor] from the care of the maternal uncle . . . although she knew or reasonably should have known [he] was physically abusing the minor's cousin." As we previously stated, section 361.5, subdivision (b)(6) was not intended to apply to deny reunification services to a negligent parent. "[R]ather, the parent must have been complicit in the deliberate abuse of the child." (*Tyrone W.*, *supra*, 151 Cal.App.4th at p. 843.)

Finally, there was insufficient evidence to support the court's finding that it would not benefit the minor to pursue reunification services with mother pursuant to section 361.5, subdivision (b)(6). As previously discussed, the statute requires the court to make "a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian." Again, mother is not an offending parent for purposes of the statute. In any event, the evidence showed mother and the minor were bonded and the minor wanted to live with mother, who was actively attempting to obtain stable housing and employment. All parties, including the Agency, supported the

recommendation that reunification services be provided for mother and the minor. The court's order to the contrary was not supported by substantial evidence.

Having reviewed the record and relevant law, we accept the Agency's concession, reverse the juvenile court's order bypassing reunification services to mother pursuant to section 361.5, subdivision (b)(6), and remand for further proceedings to determine what, if any, reunification services must be provided to mother.

DISPOSITION

The juvenile court's order bypassing reunification services pursuant to section 361.5, subdivision (b)(6), is reversed and the matter is remanded for further proceedings consistent with this opinion.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Renner, J.